IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.997 of 2005
(Lod. No.969 of 2005)
IN
NOTICE OF MOTION NO.1668 OF 2005
IN
SUIT NO. 1467 OF 2005

Lalji Dairy & Farms Pvt.Ltd .. Appellant

versus

Satish K.Kothari & ors ..Respondents

...

Ms.Alpana Ghone i/b M/s. Panchamatia & Co for the Appellant

Mr.P.N.Modi a/w Mr.Bharat Yadav for Respondent nos. 1 & 2

Ms Lata Bachhani i/b M/s.I.R.Joshi & Co for the Respondent nos. 3 to 7.

CORAM : R.M. LODHA AND
D.G. KARNIK, JJ

DATED : 22nd November 2005.

P.C.:

Admit.

2. The respondents through their advocates waive service. Appeal is heard finally at this stage.

3. The appeal is at the instance of the

defendant no.10. The grievance of the defendant no.10 is that they are occupying the subject premises as lessees for last many years pursuant to the registered lease deed and that their lease rights could not have been affected by directing them to remain in occupation as an agent of the Court Receiver.

4. It is admitted position that Notice of Motion is still pending and the impugned order is in the nature of ad-interim order. As regards the appointment of Court Receiver, the learned counsel for the appellant did not raise any grievance. From the available material, prima facie, it appears that the defendant no.1 is in occupation of the subject premises under the registered lease deed for last many years. In this situation, we find it difficult to approve the direction of the learned Motion Judge that though the defendant no.1 may continue to remain in possession of the subject premises but as an agent of the Court Receiver. If this direction is allowed to stand, it would seriously affect the leasehold rights of the defendant no.10. Rather, it shall virtually amount to extinguishment of lease hold rights of the defendant no.10 in the subject

premises. Our view finds support from the judgement of the Division Bench of this Court in the case of Credible Trading and Investment Ltd. Vs. Nandlal Balkrishna and ors reported in 2000(4) Mh.L.J. 165.

5. Appeal is accordingly allowed in part. The appointment of the Court Receiver in respect of the subject premises is upheld. The appellant (defendant no.10) shall continue to remain in possession of the subject premises as lessee but shall pay the rent as per the lease deed to the Court Receiver. The appellant shall file an undertaking with the Court Receiver within two weeks from today that they shall continue to abide by the terms of the lease deed and that they shall not create any third party right or interest in the subject premises in any manner whatsoever.

(R.M. LODHA, J)

(D.G. KARNIK, J)